



***Board of Zoning Appeals Public Hearing
May 17, 2011 —7:00 P.M***

CASE NUMBER:	V-11-017
PROPERTY LOCATION:	300 Block of Dewpoint Lane, Johns Creek, GA 30022 1st District, 1st Section Land Lot 208
CURRENT ZONING:	AG-1 (Agricultural District)
PARCEL SIZE:	1.03 Acres
PROPERTY OWNER:	Steve Roberts

REQUEST

The applicant has requested a variance to encroach approximately 42 feet into the 50-foot undisturbed buffer and an additional 25-foot impervious surface setback to allow for a future residential structure to be built on the subject property. The property is identified as Lot 4 of the Enclave at Farmbrook subdivision, which was originally platted with Fulton County with a 25-foot stream buffer from the point of wrested vegetation. The intent of the applicant's variance request is to build a residence that would be suitable to the development and consistent with existing residential dwellings in the immediate area. It should be noted that the lot would likely be unbuildable without granting a variance.

ADJACENT ZONING AND LAND USES

The subject property is located in the Enclave at Farmbrook subdivision, zoned AG-1 (Agricultural District). The property is adjacent to Farmbrook Estates subdivision (zoned AG-1) to the west, and Farmbrook subdivision (zoned AG-1) to the south. To the north are additional large AG-1 zoned tracts with residential dwellings and Brookshire Lakes subdivision, also zoned AG-1. East of the subject property is Doublegate subdivision, zoned R-3 Conditional (Single Family Residential District).

APPLICABLE CODE REQUIREMENTS

City Code; Chapter 109: Natural Resources & Environmental Protection; Article V: Stream Buffer Protection: Section 109-118: Land Development Requirements.

- (i) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the point of wrested vegetation.
- (ii) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.

VARIANCE REQUIREMENTS

Staff is including the specific conditions that must be considered for a variance to be granted in an effort to assist the Board of Zoning Appeals in considering the application and its merits. These considerations include:

- (i) When a property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance prevents land development unless a buffer variance is granted.
- (ii) Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.

ADDITIONAL STREAM BUFFER CONSIDERATIONS

Stream buffers are the areas of land immediately adjacent to the banks of state waters which facilitate the protection of water quality and aquatic habitat. Buffers also preserve green space, improve aesthetics, reduce stormwater runoff velocities, help control flooding, and keep stream water cool by providing shade. These buffers must remain undisturbed in their natural state during and after construction, however variances can be obtained that allow for encroachment under certain conditions. Stream buffers are regulated on both the state and local levels and each agency has different rules regarding buffer widths. The Georgia Environmental Protection Division (EPD) requires 25 foot buffers on both sides of a stream, measured from the point of wrested vegetation which is usually located at the tops of the banks. The City of Johns Creek requires an undisturbed buffer of 50 feet with an additional 25 feet where all impervious surfaces are prohibited. Variance applications may be granted on a case by case basis provided the applicant submit information showing the location of the stream, the extent of encroachment, and documentation of the unusual hardship should the buffer be maintained. These variance applications must also provide mitigation measures to offset the impacts of land development or disturbance on the proposed property. Although allowed by ordinance, granting of stream buffer variances should be kept to a practicable minimum in order to preserve water quality and minimize flood risks from future, upstream development. The location and extent of buffer encroachment, long term water quality impacts, and potential, less intrusive alternate designs are all factors to be considered in determining whether to issue a variance. Stream Buffer Variances granted by the City of Johns Creek are subject to annual audits by the Metropolitan North Georgia Water Planning District and the EPD. The City must ensure that consistency and thorough examination to long term impacts are considered in order to justify granting variances.

RECOMMENDATION

The subject property was originally platted with a stream buffer of 25 feet from the banks of the stream that traverses across the front yard of the lot. The applicant would like to accommodate an approximately 4,475 square-foot residential dwelling on the existing lot with 2,240 square feet of the proposed dwelling located within the stream buffer. The proposed building footprint would require a 42-foot encroachment in depth into the 50-foot undisturbed buffer and an additional 25-foot impervious surface setback.

The requested variance is necessary to build a single-family residential dwelling consistent in form and building size of existing homes located in the immediate area. With the adoption of the larger stream buffer standards of a 50-foot undisturbed buffer and an additional 25-foot impervious surface setback per the requirement of the Metropolitan North Georgia Water Planning District, approximately one-half of the proposed residential structure would be located within the stream buffer. The subject property is currently in a natural vegetative state and would require general land disturbance to prepare the site for construction of a residential dwelling, though the Department would note that this land disturbance would have been allowed under the approved Land

Disturbance Permit and Final Plat. The applicant has provided a mitigation plan equivalent to the total square footage of encroachment into the stream buffer with sufficient amount of vegetative material that will be planted at the southern end of the subject property, in compliance with the City of Johns Creek *Stream Buffer Revegetation/Mitigation Standards*. Additionally, the site plan submitted by the applicant illustrates that under the previous 25-foot stream buffer requirement, the proposed building footprint could have been developed on the property without encroaching into and maintaining a sufficient setback from the stream buffer.

In light of the applicant's inability to develop the subject property for otherwise lawful use of the site without granting a variance, the applicant providing a sufficient mitigation plan, and the subject property having had the ability to develop a residential structure without a variance based on the original stream buffer; the Department of Community and Development recommends **APPROVAL with conditions** of this request.

The Department would note that, should the variance be granted by the Board of Zoning Appeals on the merits of this request, the prospective residential structure would be limited to the building footprint as shown on the applicant's submitted site plan.

Based upon the findings and conclusions herein, Staff recommends **APPROVAL with conditions** of this request, subject to the following conditions of approval or as may be amended by the Board of Zoning Appeals:

- 1) The encroachment of the proposed building footprint shall not exceed 42 feet in depth and 2,240 square feet of impervious surface into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback, as shown on the site plan dated March 17, 2011. If the applicant requires additional encroachment greater than the depth and square footage referenced above, a separate variance must be submitted for consideration by the Board of Zoning Appeals.
- 2) Obtain required building permits from the City of Johns Creek Community Development Department prior to commencement of constructing a residential dwelling unit on the subject property.
- 3) As part of the building permit, the applicant is to submit a copy of the mitigation plan that was provided with the variance application dated March 17, 2011. The mitigation plan must clearly depict the location, number, and plant material to be installed on the property.
- 4) The applicant is required, prior to issuance of a certificate of occupancy, to replant vegetation on the subject property to offset any adverse impact associated with proposed intrusion of impervious surface closer to the stream. Revegetation of the property shall be consistent with the mitigation plan submitted by the applicant to the Department of Community and Development on March 17, 2011.

Aerial and Vicinity Map

